

IN THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM ORANGEBURG COUNTY
The Honorable Edgar W. Dickson

Appellate Case No. 2020-000451

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SC Court of Appeals

Rufus Rivers and Merle Rivers
pro se

Appellants

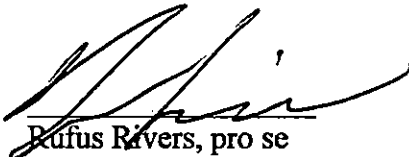
VS.

James Smith, Jr.

Respondent

APPELLANTS' FINAL BRIEF

December 14, 2020


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TABLE OF AUTHORITIES

CASES

Hargrove v. Cox, 180 N.C. 360, 104, S.E. 757, 759, (1920)

Hayes v. Turner, 98 N.C. App. 451, 454, 391, S.E. AD 513,515 (1990)

Hargrove v. Cox, 104 S.E. 757, 180 N.C. 360 (precedential)

Hodges v. Rainey, 341 S.C. 79, 85, 533, S.E. D 578, 581 (2000)

STATUTES

South Carolina Code Of Laws, 22-3-20

South Carolina Code Of Laws, 22-3-1110-22-3-1180

SECONDARY AUTHORITY

Magistrate's Law In Civil Cases

Judicial Branch: Elements of Common Landlord-Tenant problems

STATEMENT OF ISSUES ON APPEAL

Did the trial court judge err when he dismissed and remanded Appellants' civil appeal after being presented the facts that no landlord-tenant relationship existed and the inferior court judge adjudicated while lacking subject matter jurisdiction, and in violation of South Carolina Code Of Laws 22-3-20 and 22-3-1110-22-3-1180 of statutory law after the issues were raised and never addressed adequately by the courts.

STATEMENT OF THE CASE

After learning of Respondent/Plaintiff James Smith, Jr.'s fraudulent transfer of ownership to property owned by Jessie Mae Smith, now deceased. Appellants filed a summons and complaint with expedited motion for injunctive relief on August 6, 2018 alleging the same, (see exh. A) once Respondent notified Appellants of he death in the same conversation stated that he was now the owner of the property at 1429 Legrand Smoak Street, Cordova, SC 29039 where Appellants have been residing since September 2009. Respondent signed for receipt of documents on August 14, 2018. See exh. B) Respondent, through his counsel, Kathleen McDaniel, filed eviction documents on August 20, 2018, (See Exh. L) and Appellants were served on August 23, 2018.

After being served Appellants requested a hearing which was held on September 18, 2018. At the hearing, pursuant to South Carolina Code 22-3-20 and 22-3-1110. Appellants provided the court and opposing counsel their answer through a document titled "Defendants' Reply To Plaintiff's Rule To Show Cause Or Vacate", (See Exh. G) to inform the court that legal action was pending against the property pending in circuit court disputing Respondent's/Plaintiff's ownership to the property. However, the document was not entered in to the record, but could be heard on audio of the hearing. The legal action alleged Mr. Smith forged a power-of-attorney and used the same to transfer ownership of the property at 1429 Legrand Smoak Street, Cordova, SC 29039 to himself. Appellants were given physical possession in September 2009, while Mr. Smith was present, by the owner, Jessie Mae Smith, whom died intestate in May 2016. Throughout these proceedings, Appellants have maintained and emphasized the issue. Instead deferring, the magistrate proceeded to adjudicate the matter. Appellants motioned the court for reconsideration and to vacate its decision.

On October 9, 2018, hearings were held on both motions simultaneously. Both motions were denied while Appellants never received any copies of the orders to submit with their notice of appeal.

Instead, The civil clerk appeared to have taken a personal interest in the matter. He called the magistrate's office and obtained verbal verification of the order, which Appellants felt was improper as well. Shortly thereafter, Appellants received a copy of a letter from the magistrate's court directed to attorney McDaniel, asking her to recommend an appeal bond amount. On November 2, 2018, while awaiting the bond hearing, Appellants were approached by attorney McDaniel several minutes prior to the hearing, whom presented a copy of a rental analysis which was the sole reference for determining the rental amount since there was no rental agreement. Respondent's counsel took the bizarre approach that tenant-at-will constitutes a landlord-tenant relationship. The magistrate, Stephanie McKune-Grant determined rents at \$700.00 per month.

On November 5, 2018, Appellants filed a motion for review of rental payments(appeal bond) with the circuit court and delivered a copy to the magistrate's office and was denied. A hearing was held in circuit court on April 8, 2019 and the honorable George M. McFaddin issued an order affirming the magistrate's decision on April 16, 2019. Appellants immediately filed a motion for reconsideration which was denied on April 16, 2019 as well.

On May 21, 2019 after a brief hearing on the civil appeal, the Honorable Brian M. Gibbons ordered a continuance stating, the case was not ripe for hearing until Judge Jackson, the Master-in-Equity had ruled. Appellants argue that the order was improper and should have been dismissed because the eviction proceedings were held after he summons and complaint had been filed in circuit court and served on Respondent/Plaintiff. Pursuant to South Carolina Code Of Laws 22-3-20, the eviction proceedings should have never been initiated.

On October 18, 2019, corrected from previously being dated as November 18, 2018, the appeal hearing was held in circuit court where the Honorable Edgar W. Dickson upheld the magistrate's decision by issuing an order on January 6, 2020(See Exh. D). Appellants filed a motion for

reconsideration on January 14, 2020. On February 21, 2020, Judge Dickson issued a Final order(See Exh. F) and Appellants' appeal timely followed(See Exh. H).

ARGUMENT

The trial court judge erred when he dismissed and remanded Appellants' civil appeal when the inferior court lacked subject matter jurisdiction while adjudicating an ejection matter when there was no landlord-tenant relationship.

The magistrate court violated South Carolina Code Of Laws 22-3-20, “No magistrate shall have cognizance...when title to real property shall come in to question,except as provided in Title 11 of his chapter.” (See Magistrates Law in Civil Actions) “...jurisdiction may not be waived or conferred upon the magistrate by consent of both parties or by order of a higher court.” At the eviction hearing , Respondent/Plaintiff, through his counsel, states that he had only received amended complaint. That alone was evidence that the title to the property was being challenged. Respondent, through his . counsel, would have the court believe that no matter what, the Respondent is entitled to the property because he is the son of the deceased owner who died intestate. Unfortunately, that is a matter only the probate court could determine. Once the issue was raised, the magistrate knew or should have known to defer. See Hargrove v. Cox, 104 S.E. 757, 180 (N.C. 1920), Hargrove v. Cox, 180, N.C. 360, 104, S.E. 757, 759, (1920), Hayes v. Turner 98 N.C. App. 451,454,391, S.E. 2D 513, 515, (1920), Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E. D 578, 581(2000).

The trial judge should have verified that Appellants/Defendants signed a valid undertaking to stay ejection and that undertaking should suffice throughout the process unless it is modified by the courts. The appropriate undertaking would have been pursuant to South Carolina Code Of Laws 22-3-1120. Appellants proposed an undertaking, (See Exh. C) but, was told by second judge in the courtroom, that it only applied to criminal cases. South Carolina Code Of Laws 27-40-800 requires

that upon appealing , in order to stay ejectment , Appellants must sign an undertaking(See Exh. K). Appellants were never allowed or offered to sign an undertaking as shown in the example. Since March, 2020, the magistrate's office has refused to accept Appellants' payments(See Exh J) and Respondent's counsel has petitioned the circuit court to determine rental payments while appeal is pending. Through his counsel, Respondent contends the purpose of Appellants' lawsuit was to prove Appellants owned the property at 1429 Legrand Smoak Street, Cordova, SC 29039. TR 3.14-16. The purpose of Appellants' lawsuit was to prove that Respondent James Smith, Jr. did forge a power-of-attorney to self-deal and transfer ownership to the property to himself.

The appeal hearing was held on October 18, 2019 before the Honorable Edgar W. Dickson. The issues of whether a landlord-tenant relationship existed or the magistrate's lack of subject matter jurisdiction were no explicitly addressed. On January 6, 2020, the court issued it's order (See Exh. D). Appell. Filed a motion for reconsideration on January 14, 2020(See Exh. E). On February 21, 2020, the circuit court issued it's final form 4 order denying Appellants' motion for reconsideration, dismissing and remanding the matter to the magistrate's court (See Exh. F). The trial court erred by upholding the magistrate's court decision for reasons described above. The South Carolina Judicial Branch's Elements of Common Landlord-Tenant Problems 3B: Commencing Ejectment states, "To maintain subject matter jurisdiction in an ejectment case, the court must find that a landlord-tenant relationship exists." Appellants respectfully ask this court to reverse the trial court's decision.

CONCLUSION

For the preceding reasons, Appellants respectfully ask this court to reverse the trial court's decision and Respondent be allowed to pursue whatever remedies available to him in circuit court or probate court.

